

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

**for**

Attorney Docket Number: 268318US (FSP0359)

Client Reference Number: 268318US

Title: provide set top box configuration for content on demand

Application Number: 10/579,097

Filing Date: Friday, May 18, 2007

Group Art Unit: 2623

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Review is requested of the final rejection in the above-identified application. No amendments are being filed with this request.

This Request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

I am the attorney or agent of record.

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## **ISSUES/ARGUMENTS FOR WHICH THIS REVIEW IS BEING REQUESTED**

The Applicant thanks the Examiner for the continued consideration of this application. This is an appeal of the Office Action mailed on May 24, 2010. Please consider the following remarks in support of the patentability of the present claims.

### **Response to Arguments**

The Examiner argues that the concept of "Service Group Identifier" in broadcast network is well known to predict which content/channel is common for all STBs versus only to a particular group of STBs. The Examiner asserts that Jerding discloses that the MPEG-2 content is received at the service group of QAM modulators which comprises service group number and that the DNCS uses the service group number to determine which modulator has access to a particular digital home communication terminal (DHCT), where service group inserts other data and information into the stream and transmits it to DHCT.

The Applicant does not agree that the concept of "Service Group Identifier" in broadcast network was well known to predict which content/channel is common for all STBs versus only to a particular group of STBs at the time the invention was made. Even accepting arguendo that this feature was known, it is nonetheless not the case that Jerding combined with Hamilton would have led one of skill in the art to the claimed invention at the time of the invention, for at least the reasons below.

Jerdig does not disclose the claim feature of composing a service group identifier into an audio and/or video stream format, and communicating the configuration information with a service group identifier to set top boxes. Even under the Examiner's analysis above, Jerding provides no motivation or suggestion that the service group identifier would be communicated to the DHCT or used in any way by the DHCT.

The Examiner argues that Hamilton discloses that the customers receive the spectrum of multiple channels, where some channels are common and others are unique to a particular node

as represented in Fig. 1; that Hamilton discloses that the hub creates the unique spectrum by inserting channels that are unique to a node; this assembled

spectrum containing a plurality of broadcast channels that is transmitted to all customers and plurality of unique channels that is transmitted to customers at a specific node; and that each node has the unique identifier that is associated with the hub as represented in Fig. 3 (element 306).

By the Examiner's own analysis, Hamilton does not teach that service group identifiers are composed into an AV stream format at the service node, or communicated to set top boxes by the service node along with configuration information.

Neither reference suggests an application of the service group identifier at the DHCT or set top box, nor the claimed manner of communicating the service group identifier to the set top box. The Applicant respectfully maintains that this feature would not obviously arise from combining the references, being absent from both nor a use or motivation for doing so being evident in either one.

The Applicant maintains that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, because it does not only take into account knowledge which was within the level of ordinary skill at the time the claimed invention was made, and includes knowledge gleaned only from the applicant's disclosure. Applying the service group identifier in the particular way claimed, from all the many possibilities for designing a broadband system, has not been shown by the Examiner to be an obvious design choice absent the teachings in the Applicant's own disclosure.

The Applicant's detailed traversal of the rejection follows.

### **35 U.S.C. 103(a)**

#### **Claims 6, 7, and 10**

Claims 6, 7, and 10 are rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over US PG Pub 2006/0271973 to Jerding et al (hereafter referenced as Jerding) in view of US PG Pub 2003/0139980 to Hamilton (hereafter referenced as Hamilton).

Jerding does not alone disclose or render obvious the claim feature of composing a service group identifier into an audio and/or video stream format, and communicating the

configuration information with a service group identifier to set top boxes. The issue has become whether Hamilton teaches such a feature or renders it obvious in light of Jerding. The Applicant respectfully asserts that it does not.

Neither Jerding nor Hamilton describes composing service group identifier at a service node into an AV stream format, and communicating the service group identifier along with configuration information to a set top box. Hamilton merely describes (for example at Par 23-24) that certain channels are assigned to broadcast content, and certain channel are assigned to narrowcast content. This is simply a conventional broadcasts/narrowcasts distribution system. In Hamilton service group identifiers are not composed into an AV stream format at the service node. Service group identifiers are not communicated to set top boxes by the service node along with configuration information.

The Examiner is apparently applying some sort of Official Notice to reach the conclusion that composing a service group identifier into an A/V stream format by a service node would be obvious from Hamilton, but the Applicant respectfully finds such a conclusion unreasonable and unsupported by the disclosure of Hamilton, alone or together with Jerding. Neither reference hints at such a feature, nor suggests how a set top box would use such a feature in a VOD context, such as for example set forth in claim 10. In fact, it is only with the benefit of hindsight of the Applicant's own disclosure that such a feature would somehow be evident to one skilled in the art, not due to anything disclosed in Jerding or Hamilton.

Quite clearly after substantial prosecution of this matter, Jerding and Hamilton now present the best available prior art. The Applicant has made no amendments which would necessitate further search or consideration. It is evident that the Applicant's claims are now in condition for allowance.

### **Claims 8 and 9**

Claims 8 and 9 are rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Jerding in view of Hamilton as applied to claim 6 above, and further in view of US PG Pub 2007/0130583 to Thiagarajan et al (hereafter referenced as Thiagarajan). Claims 8 and 9 are patentable for at least the reasons provided, *supra*.